No. 16-1027

IN THE
Supreme Court of the United States

RYAN AUSTIN COLLINS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF FOR PETITIONER

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November 13, 2017

QUESTION PRESENTED

Whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.

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INTRODUCTION

Forty-six years ago, a plurality of this Court thought it "abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." *Coolidge v. New Hampshire*, 403 U.S. 443, 463 n.20 (1971). The *Coolidge* plurality was right.

In this case, a police officer—uninvited, and without a warrant—walked up a private residential driveway next to a house. He was searching for evidence of a past crime: a motorcycle that had eluded him in traffic over a month earlier. The officer bypassed the steps to the front porch and entered a parking patio nestled against the house and walled off on three sides. He then approached Petitioner's parked motorcycle, several feet from the side of the house, and removed its cover.

The Supreme Court of Virginia approved these acts under the automobile exception. It held that the motorcycle was readily mobile and the officer had probable cause, so any search could proceed without a warrant, period. Essentially, the court held that the automobile exception trumps Fourth Amendment protections for the home and curtilage.

But searching a vehicle within curtilage, such as in a parking patio, carport, or garage, is not just a search of the *vehicle*. It is also a physical intrusion to gather evidence in the curtilage, where privacy expectations reach their peak. *Florida v. Jardines*,

569 U.S. 1, 11 (2013) (holding that police who brought a drug dog into curtilage had performed a "search" of a home that presumptively required a warrant).

The justifications for warrantless vehicle searches in public places stall out when the vehicle is near the home. First, automobiles are readily mobile, but this Court has consistently rejected warrantless home searches for contraband and human beings who are equally mobile. Second, vehicles may carry reduced expectations of privacy on public roads where they are subject to pervasive regulatory regimes. But those regulations generally do not apply to cars parked at home. And even if they did apply, police still do not get a free pass into protected curtilage in other contexts to search for objects that carry lesser expectations of privacy.

Whatever officers can do in public places, the Fourth Amendment does not permit them to enter parking patios, carports, or garages to search for evidence there. As the *Coolidge* plurality warned, "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." 403 U.S. at 461.

This Court should reject the Virginia court's rule allowing warrantless vehicle searches without regard to curtilage. The judgment below should be reversed.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is reported at 790 S.E.2d 611 (Va. 2016). Pet. App. 1. The decision of the Court of Appeals of Virginia is reported at 773 S.E.2d 618 (Va. Ct. App. 2015). Pet.

App. 32. The Circuit Court of Albemarle County ruled from the bench, as reprinted at Pet. App. 50.

JURISDICTION

The Supreme Court of Virginia entered judgment on September 15, 2016, and denied rehearing on November 22. Pet. App. 26, 111. This Court has jurisdiction under 28 U.S.C. § 1257(a), and granted certiorari on September 28, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Virginia Code § 18.2–108, upon which Collins was convicted, reads in relevant part:

> A. If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.

STATEMENT OF THE CASE

Facts. Officers Matthew McCall and David Rhodes of the Albemarle County Police Department were looking for the person who eluded them on a motorcycle in two high-speed incidents. Pet. App. 3. The rider's helmet had obscured his face. Pet. App. 3, 67, 70. For reasons not relevant here, the officers suspected Petitioner, Ryan Collins. Pet. App. 3, 5.

More than a month after the eluding incidents, Officers McCall and Rhodes encountered Collins at the DMV. Pet. App. 5. During their conversation, an officer visited Collins' Facebook page and spotted a picture of a motorcycle parked at a house. That motorcycle looked to the officer like the same one that had eluded him. Collins said he did not know anything about the motorcycle. *Id.*

After leaving the DMV, Officer Rhodes located the house in the photograph on Dellmead Lane. Pet. App. 5–6. Collins' girlfriend (and mother of his child) lived there, as did Collins himself at least several nights each week. Pet. App. 27, 91. The court below thus referred to the Dellmead house as "Collins's residence," which is accurate for Fourth Amendment purposes.[1] Pet. App. 12.

The Dellmead house was a brick rancher. Pet. App. 56–57. Its driveway ran from the street up to the left side of the house. Pet. App. 30, 112 (photograph). The asphalt driveway reached the front threshold of the house, then gave way to a concrete parking patio

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[1] "An overnight guest in a home may claim the protection of the Fourth Amendment." *Minnesota v. Carter*, 525 U.S. 83, 90 (1998).

that extended much of the width of the house. Pet. App. 30, 114 (photograph); JA140 (photograph).

A dark colored car was parked about halfway up the driveway, where a visitor might pass to reach the front door. Pet. App. 112–13 (photographs). Behind that car, a motorcycle sat under an opaque white cover.[2] Pet. App. 6, 112–13. The motorcycle rested on the concrete parking patio, beyond the house's front perimeter and beyond the end of the black asphalt driveway. Pet. App. 30, 112–14. This portion of the property was enclosed on three sides: the home on one side and brick retaining walls on the opposite side and the back. Pet. App. 30, 57, 114 (photograph). The motorcycle was no more than roughly a car's width from the side of the dwelling. Pet. App. 30, 114.

Seeing the motorcycle under a cover, Officer Rhodes walked onto the driveway.[3] Pet. App. 6. He did not have permission to go onto the property—he testified no one was home. Pet. App. 88; JA18. Officer Rhodes walked past the end of the asphalt driveway and onto the partly enclosed parking patio alongside the home. He then lifted and removed the motorcycle cover and obtained the license tag and VIN number. Pet. App. 6.

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[2] The Virginia courts referred to the cover as a "white tarp." Pet. App. 6, 35. The "white tarp" was in fact a motorcycle cover, *see* Pet. App. 114—a product designed to protect an open vehicle from the elements, and in common use by motorcycle owners.

[3] The officer's probable cause to believe that the motorcycle was the one that had eluded him in traffic is not disputed for purposes of this appeal.

After running the VIN number, Officer Rhodes learned the motorcycle was flagged as stolen. Pet. App. 6. Having found valuable evidence, he placed the cover back over the motorcycle, left the property, and "parked on another street." *Id.*; JA18.

Shortly thereafter, Officer Rhodes saw the vehicle in which Collins had left the DMV. JA18–19. Officer Rhodes then returned to Dellmead Lane and knocked at the front door. Collins responded. Pet. App. 6. Collins admitted that he owned the motorcycle. Pet. App. 7–8. Officer Rhodes then arrested Collins for possession of stolen goods. Pet. App. 8.

Proceedings Below. Collins was charged with receiving stolen property with knowledge that it was stolen. Pet. App. 8.

Moving to suppress, Collins challenged Officer Rhodes' trespass onto curtilage as unconstitutional. Pet. App. 8, 97–98. Collins also argued that the automobile exception did not apply to vehicles located on private property. Pet. App. 8, 97–98, 103–04. The Circuit Court of Albemarle County denied the motion to suppress. Pet. App. 10. Collins was later convicted of the charge. *Id.*

Collins appealed. The Court of Appeals of Virginia observed that the Commonwealth "[did] not dispute that Officer Rhodes' actions constituted [Fourth Amendment] searches." Pet. App. 38. The court reasoned that the only question before it was what exceptions (if any) to the Warrants Clause justified Officer Rhodes' warrantless searches. Pet. App. 38.

The Court of Appeals assumed the partly enclosed parking patio where the motorcycle was parked was curtilage. Pet. App. 40–41. The court also reflected in a footnote that the automobile exception might not apply to vehicles on private property. Pet. App. 43. But the court held "Officer Rhodes acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle" due to exigent circumstances. Pet. App. 44. Collins again appealed.

The Supreme Court of Virginia refused to adopt the exigent-circumstances rationale. Pet. App. 12. It noted that "neither the Commonwealth nor the trial court invoked the exigent circumstances exception" below and held that "this case is more appropriately resolved under the automobile exception." Pet. App. 12, 14.

The court thus applied what it called a "simple, bright-line test for the automobile exception." Pet. App. 14. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." Pet. App. 14–15 (quoting *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)). Simply applying this rule to the motorcycle and facts of this case, the court held that probable cause existed. Pet. App. 15. Nor was there any real question that the motorcycle was "readily mobile." Accordingly, the court found the warrantless searches lawful. *Id.*

The court then added that the automobile exception applied to the motorcycle even though it was located on private property. Pet. App. 19–20. The court's justification was threefold. First, the U.S. "Supreme Court has never limited the automobile

exception such that it would not apply to vehicles parked on private property." Pet. App. 20. Second, "[o]ur Court has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view." Pet. App. 20. Third, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *California v. Carney*, 471 U.S. 386 (1985), "did not distinguish the automobile exception on a public roadway versus on a private driveway." Pet. App. 20. The court then held that the automobile exception applies to a vehicle located on private property. Pet. App. 21–22.

The court concluded that Officer Rhodes' Fourth Amendment searches were "justified" under the automobile exception. Pet. App. 26, 111 (denying rehearing).

SUMMARY OF ARGUMENT

The warrantless search of Collins' motorcycle only a few feet from his home violated the Fourth Amendment. In holding otherwise, the Virginia Supreme Court relied on a "bright-line" rule that the automobile exception trumps the Fourth Amendment protections for the home and curtilage. That was error.

The Fourth Amendment presumptively requires a warrant to search a home. That same principle requires a warrant to search the curtilage, which is "part of the home itself for Fourth Amendment purposes." *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

An officer's entry onto the curtilage to search a vehicle is itself a search of the curtilage that

presumptively requires a warrant. That follows from *Jardines*, which held that an unlicensed physical intrusion onto curtilage to investigate is a search of the home. *Id.* at 9. For similar reasons, searching a vehicle within the curtilage is a search of the home because it violates the reasonable expectations of privacy surrounding the home.

None of this Court's decisions exempt vehicle searches within the curtilage from the warrant requirement. To the contrary, the Court has recognized limits on the automobile exception based on the location of the vehicle. In *Coolidge*, 403 U.S. at 479–80, a majority held that the automobile exception did not justify the search of a vehicle parked in a driveway. *Id.* The plurality also insisted on a "significant constitutional difference" between an open-road vehicle search and the search of an automobile parked at home. *Id.* at 463 n.20. *California v. Carney* also shows that the automobile exception does not apply when a vehicle is subject to the protections of the home, as when a mobile home is positioned in a residential fashion. 471 U.S. at 391–92.

Further, the rationales for the automobile exception do not excuse the warrant requirement within curtilage. First, although automobiles are readily mobile, searches through homes for equally mobile drugs and human beings require warrants. Second, vehicles may carry lesser expectations of privacy on public roads where they are subject to pervasive regulation. They are not pervasively regulated, however, when parked in a driveway, carport, or garage at home. In any event, when the protections of the home and curtilage apply,

police must obtain a warrant to search even for items with reduced or *nonexistent* expectations of privacy (such as illegal drugs). At a time when warrants are available with unprecedented efficiency and exigency doctrine can handle case-by-case emergencies, there is no legitimate law enforcement need for a categorical automobile exception within the home and curtilage.

The officer's search of Collins' motorcycle thus violated the Fourth Amendment. The motorcycle was parked and covered within a few feet of the house, where classic curtilage like a porch or side garden might be. To reach the motorcycle, the officer had to veer off the customary invited path to the front door. He certainly had no customary invitation to strip off the motorcycle's cover to investigate it. The officer also violated Collins' reasonable expectations of privacy in that location.

ARGUMENT

The automobile exception does not authorize a warrantless search of a vehicle within the curtilage of a home.

I. The home and curtilage receive core Fourth Amendment protection.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). "At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961).

That core protection traces back to the common law of England, which "has so particular and tender a

regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity." 4 W. Blackstone, *Commentaries on the Laws of England* 223 (1769 ed.). That castle doctrine not only protected property, but stood as a bulwark for all individuals against arbitrary governmental power. "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter." *Miller v. United States*, 357 U.S. 301, 307 (1958) (quoting William Pitt, Earl of Chatham, in a 1763 speech). To effect this protection, the Fourth Amendment bars police from entering homes without a warrant. *Steagald v. United States*, 451 U.S. 204, 211 (1981); *see also Agnello v. United States*, 269 U.S. 20, 33 (1925) (An officer's "[b]elief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant.").

To ensure the protection of the home itself, the Fourth Amendment protects more than just the four walls of a house. It also secures "the area 'immediately surrounding and associated with the home"—known as the curtilage—"as 'part of the home itself for Fourth Amendment purposes.'" *Jardines*, 569 U.S. at 6 (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). "The curtilage of a dwelling house is a space necessary and convenient, habitually used for family purposes and the carrying on of domestic employment; the yard, garden, or field which is near to and used in connection with the dwelling." *Bare v. Commonwealth*, 94 S.E. 168, 172 (Va. 1917). This area is where "privacy expectations are most

heightened" because it is "intimately linked to the home, both physically and psychologically." *California v. Ciraolo*, 476 U.S. 207, 213 (1986).

The "identity" of home and curtilage "has ancient and durable roots." *Jardines*, 569 U.S. at 6. At common law, the "house protect[ed] and privilege[d] all its branches and appurtenants" within that area, including barns and stables. 4 Blackstone 225; *see also* 1 Matthew Hale, *Historia Placitorum Coronae* 557 (1st Am. ed. 1847) (1736) (protections for the home "doth not only include the dwelling-house, but also the out-houses, that are parcel thereof," such as "barn, stable, [and] cow-houses").

The Fourth Amendment thus dictates that police must obtain a valid search warrant to search within curtilage. "Because the curtilage is part of the home, searches and seizures in the curtilage without a warrant are also presumptively unreasonable." *United States v. Perea-Rey*, 680 F.3d 1179, 1184 (9th Cir. 2012) (holding that officers who "occupied [a] carport" within curtilage but without a warrant violated the Fourth Amendment). *See also Taylor v. United States*, 286 U.S. 1, 5–6 (1932) (holding it "inexcusable" and "unreasonable" for police to search a garage "adjacent to the dwelling" without a warrant); *United States v. Wells*, 648 F.3d 671, 679 (8th Cir. 2011) (observing that "because we treat curtilage as part of the home . . . [the] same rules apply" with regard to warrants); *United States v. Breza*, 308 F.3d 430, 433 (4th Cir. 2002) (noting that the "curtilage of [the] home . . . typically is afforded the most stringent Fourth Amendment protection"); *Daughenbaugh v. City of Tiffin*, 150 F.3d 594, 601 (6th Cir. 1998) ("[W]e conclude that the garage was located

within the curtilage of [the] house. The officers consequently violated [the owner's] constitutional rights by conducting a warrantless search of the garage").

A. Property principles require a warrant for intrusions to search.

To search a vehicle within the curtilage, an officer generally must intrude into the curtilage. That physical intrusion to search itself requires a warrant: "When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred." *Jardines*, 569 U.S. at 5. Without a warrant, such a search is presumptively unreasonable. *See Steagald*, 451 U.S. at 211; *Taylor*, 286 U.S. at 5.

Jardines held that bringing a drug-sniffing dog to the front porch of a home is a search. 569 U.S. at 6. First, the Court recognized that "[t]he officers were gathering information in an area belonging to Jardines and immediately surrounding his house—in the curtilage of the house, which we have held enjoys protection as part of the home itself." *Id.* at 5–6. By setting foot on the curtilage, the officers triggered the "'sacred'" principle that "'no man can set his foot on his neighbour's close without his leave.'" *Id.* at 8 (quoting *Entick v. Carrington*, 2 Wils. K. B. 275, 291, 95 Eng. Rep. 807, 817 (K.B. 1765)).

The remaining question was whether the homeowner "had given his leave (even implicitly) for them to do so." *Id.* at 8. An "implicit license typically permits the visitor to approach the home by the front

path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.*; *see also id.* at 19 (Alito, J., dissenting) ("Of course, this license has certain spatial and temporal limits. A visitor must stick to the path that is typically used to approach a front door, such as a paved walkway."). But "the background social norms that invite a visitor to the front door do not invite him there to conduct a search." *Id.* at 9.

Jardines thus held that there is no implicit license to "introduc[e] a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." *Id.* "To find a visitor knocking on the door is routine (even if sometimes unwelcome)." *Id.* But spotting that same visitor "marching his bloodhound into the garden" would "inspire most of us to—well, call the police." *Id.*

That same "property-rights baseline" makes it a Fourth Amendment search, requiring a warrant, to "physically intrud[e] on" curtilage to investigate a vehicle. *Id.* at 11.

Visitors are invited to the front door—not to stop at the family car in the driveway "in hopes of discovering incriminating evidence." *Id.* at 9. "There is no customary invitation to do *that*." *Id.* "[T]he very act of hanging a knocker" surely doesn't invite anyone "to rummage through the trunk for narcotics." *Id.* Because there is no implicit license to perform a vehicle search within the curtilage, entering the curtilage for that purpose is itself a search that presumptively requires a warrant. *E.g.*, *State v. Roaden*, 648 N.E.2d 916, 919 (Ohio. Ct. App. 1994) (a

warrantless "initial intrusion onto private property to view the inside of appellant's vehicle was improper").

B. Violating reasonable expectations of privacy requires a warrant.

Examining a vehicle within the curtilage is also a search of the home because it invades reasonable expectations of privacy there. *See Jardines*, 569 U.S. at 12 (Kagan, J., concurring) (citing *Katz v. United States*, 389 U.S. 347, 360 (1967)).

The curtilage enjoys the Fourth Amendment's core privacy protections. "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *Ciraolo* 476 U.S. at 213. The Fourth Amendment accordingly "prevent[s] police officers from standing in an adjacent space and trawling for evidence with impunity." *Jardines*, 569 U.S. at 13 (Kagan, J., concurring).

An entrance into the curtilage to conduct an investigation—whether canine or vehicular—violates expectations of privacy in a "most intimate and familiar space." *Id.* at 14; *see also State v. Vickers*, 793 S.E.2d 167, 169–70 (Ga. Ct. App. 2016) ("[A] defendant has a reasonable expectation of privacy in a vehicle parked within the curtilage of his home."); *Redwood v. Lierman*, 772 N.E.2d 803, 813 (Ill. Ct. App. 2002) ("By parking a vehicle in the driveway or yard of one's home, one brings the vehicle within the zone of privacy relating to one's home."); *Binder v. Redford Twp. Police Dep't*, 93 F. App'x 701, 703 (6th

Cir. 2004) ("[N]o Supreme Court decision allows warrantless entry into areas of a home or business where the owner has a reasonable expectation of privacy simply because the police are in search of an automobile.").

II. This Court has long recognized that the automobile exception has limits based on the location of the vehicle.

On both property and privacy grounds, an intrusion into the curtilage to perform a search presumptively requires a warrant. None of this Court's decisions exempt such searches from the warrant requirement simply because the ultimate target of the intrusion is an automobile. On the contrary, at least twice this Court has recognized that the *location* of a vehicle may exclude it from the scope of the automobile exception.

First, in *Coolidge v. New Hampshire*, the Court confronted a vehicle parked at home, in a private driveway. 403 U.S. at 447. It held that the warrantless search of that vehicle was unreasonable.

After arresting a murder suspect inside his home, police impounded his car and later searched it. *Id.* New Hampshire argued that the automobile exception permitted the car search. See *id.* at 458–64 (plurality opinion). The Court rejected that argument and excluded the evidence. Justice Stewart wrote the plurality opinion, and Justice Harlan joined part II-D of that opinion to form a majority. *Id.* at 491. That part of *Coolidge* "is a binding precedent." *Horton v. California*, 496 U.S. 128, 136 (1990).

The *Coolidge* dissent—like the Virginia Supreme Court here—argued that the automobile exception fully applied to a vehicle parked "in the driveway of a person's house." 403 U.S. at 525 (White, J., dissenting in part).

The majority rejected that view. Instead, it held that "a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable." *Id.* at 474. That is, the warrant requirement remains in effect for vehicles on residential property: "If the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Id.* at 480. The majority worried that allowing *any* vehicle search on probable cause alone "would simply . . . read the Fourth Amendment out of the Constitution." *Id.*

The plurality opinion reaffirmed that the automobile exception has limited scope: "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Id.* at 461 (Section II-B). *Where* the automobile sat was critical: "it seems abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." *Id.* at 463 n.20. Because the police arrested the defendant inside the house, there was no "justified initial intrusion" onto the

driveway where the car sat. *Id.* The automobile exception was "simply irrelevant." *Id.* at 462.

Second, in *California v. Carney*, 471 U.S. 386 (1985), the Court again held that the automobile exception does not apply anywhere a vehicle may be found. *Carney* began by recognizing the two rationales for the automobile exception. First, automobiles are readily movable. *Id.* at 390–91. Second, automobiles carry a lower expectation of privacy because they are subject to "pervasive regulation." *Id.* at 391–92.

The Court then announced that these underlying justifications for the automobile exception "come into play" only "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use *and is found stationary in a place not regularly used for residential purposes*—temporary or otherwise." *Id.* at 392–93 (emphasis added).

The Court applied that rule to the warrantless search of a motor home in a public parking lot. The motor home was readily mobile and licensed to operate on public streets. That alone, however, was not enough. The motor home was also "parked" in a "lot"—it was "stationary in a place not regularly used for residential purposes." *Id.* at 392. The automobile exception thus applied. *Id.* at 392–93.

The implication in *Carney* is that home and curtilage protections would trump the automobile exception if the motor home (unquestionably a vehicle) were located, say, up a private driveway or in an RV park.

III. The rationales for the automobile exception do not support extending it to the curtilage.

The automobile exception is an axe, not a scalpel. The Commonwealth argues that the search in this case was quick and easy and took place during "normal daylight hours." BIO 27. But the automobile exception, when it applies, is *categorical*. There is no "separate exigency requirement," *Dyson*, 527 U.S. at 466, and only probable cause limits the scope of the search. If the automobile exception applies on curtilage, as held below, then the police can search a vehicle there (in driveways, parking patios, carports, or garages) day or night.

And the automobile exception authorizes far more intrusive conduct than removing a motorcycle cover. At a minimum, it ordinarily involves entering the interior of a vehicle and perusing private spaces like the trunk and glove box. But it can go much further. It has justified tearing up a car's upholstery. *United States v. Ross*, 456 U.S. 798, 817–18 (1974) (describing the search in *Carroll v. United States*, 267 U.S. 132 (1925)). Automobile searches can be quite destructive. *See, e.g., United States v. Howard*, 489 F.3d 484, 488, 497 (2d Cir. 2007) (Sotomayor, J.) (approving under the automobile exception a search that involved "tampering" with a vehicle so the driver could not lock it, then breaking a pool cue in the back seat and using it to pry open the glove box); *United States v. Guerrero-Sanchez*, 412 F. App'x 133, 136–37, 141 (10th Cir. 2011) (approving a search that involved removing a fender and windshield cowling, noting that officers had probable cause to "dismantle" the vehicle); *United States v. Strickland*, 902 F.2d 937,

942–43 (11th Cir. 1990) (slashing a spare tire); *United States v. Garcia*, 897 F.2d 1413, 1420 (7th Cir. 1990) ("dismantling [car] doors" by "opening" their panels).

Regardless of whether such warrantless searches make sense by the roadside or in open parking lots, they would be outright dangerous in a private driveway, carport, or garage, particularly at night. Such searches would generate calls to the police, *Jardines*, 569 U.S. at 9, and could invite the use of force in defense of property. A rule allowing such searches would cause trouble more than solve it.

To decide whether the automobile exception applies here, the Court should ask "whether application of th[is] doctrine" to the curtilage "would untether the rule from [its] justifications." *Riley v. California*, 134 S. Ct. 2473, 2485 (2014). The two premises of the automobile exception are inherent mobility and reduced expectations of privacy. Neither of those premises can justify a new exception to the warrant requirement for curtilage searches when a vehicle is involved.

A. Ready mobility does not justify a warrantless search in the home and curtilage.

The original basis for the automobile exception was that automobiles are readily mobile. *See Carney*, 471 U.S. at 390 ("[T]he ready mobility of the automobile justifies a lesser degree of protection.") (citing *Carroll*, 267 U.S. at 153). Within the home and curtilage, however, ready mobility does not excuse the need for a warrant.

Drugs, for example, are "easily removed, hidden, or destroyed." *Vale v. Louisiana*, 399 U.S. 30, 34 (1970). Despite acknowledging the risk of evidence being destroyed, the Court has refused to permit warrantless searches of the home for drugs. Absent true exigent circumstances, there is no mobility-based exception within the home for searches. *Id.* at 35; *see also Chimel v. California*, 395 U.S. 752, 763, 768 (1969) (holding that a post-arrest warrantless search of the home was unreasonable despite the dissent's contention (at 774) that "there must almost always be a strong possibility that confederates of the arrested man will in the meanwhile remove the items for which the police have probable cause to search"); *Riley*, 134 S. Ct. at 2486, 2491 (requiring a warrant for post-arrest searches of cell phones, which contain "many sensitive records previously found in the home," despite threats of evidence destruction).

The same is true when searching for people, who "are inherently mobile." *Steagald*, 451 U.S. at 221. This Court held in *Steagald* that officers must obtain a search warrant before entering a third party's home to execute an arrest warrant. *Id.* at 220–21. Although the ready mobility of human beings may force officers "to return to the magistrate several times as the subject of the arrest warrant moves from place to place," *id.* at 221, an officer's "judicially untested determinations" of probable cause do not justify an entry to search for people or objections in the absence of genuine exigent circumstances. *Id.* at 213; *see also Minnesota v. Olson*, 495 U.S. 91, 100–01 (1990) (a warrantless entry to arrest an overnight guest without exigent circumstances violated his Fourth Amendment rights).

The home and curtilage may contain a great many other items that are "equally movable" compared to automobiles. *Coolidge*, 403 U.S. at 461 n.18 (plurality). But "if the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Id.* at 480 (opinion of the Court). The logic of that rule would give the authorities unmediated access to personal belongings containing a "wealth of detail about [our] familial, political, professional, religious, and sexual associations." *Riley*, 134 S. Ct. at 2490.

B. Pervasive regulation does not diminish reasonable expectations of privacy in the home and curtilage.

The automobile exception also rests on reduced expectations in privacy because "'[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls.'" *Carney*, 471 U.S. at 392 (quoting *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976)). That pervasive regulation reduces privacy expectations because "[a]s an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order." *Opperman*, 428 U.S. at 368. This rationale does not apply to vehicles parked in garages or on private driveways.

First, automobiles parked on private driveways generally are not subject to the pervasive regulations that apply on public roads. In Virginia, for example, a panoply of regulations apply specifically to automobiles "operated" on "highways."[4] "Highway[s]" means streets and roads "open to the use of the public for purposes of vehicular travel." Va. Code § 46.2–100. By definition, these regulations do not govern within private garages or on private driveways. In fact, the Virginia Code governing vehicle regulation specifically recognizes greater privacy interests on private property. It states that officers may only "patrol the landowner's property to enforce state, county, city, or town motor vehicle registration and licensing requirements" with *"the consent of the landowner."* Va. Code § 46.2–102 (emphasis added).

Many vehicle regulations in other states are likewise limited to vehicles operated on public roads. That includes headlight requirements,[5] exhaust

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[4] *See* Va. Code § 46.2–711(E) ("No vehicles shall be *operated on the highways* in the Commonwealth without displaying the license plates required by this chapter"); *id.* at –1157(A) (The owner of a vehicle "registered in Virginia and *operated or parked on a highway* within the Commonwealth shall submit his vehicle to an inspection"); *id.* at –1049 (forbidding the "*operation of [a] vehicle on a highway* unless it is equipped with an exhaust system in good working order and in constant operation to prevent excessive or unusual levels of noise"); *id.* at –1011 ("Every motor vehicle . . . *used on a highway* shall be equipped with at least two headlights") (emphases added).

[5] *E.g.*, Ariz. Rev. Stat. Ann. § 28-922 ("[A] vehicle *on a highway* in this state shall display lighted lamps and illuminating devices as required by this article.") (emphasis added); Haw. Rev. Stat. Ann. § 291-25(a); Iowa Code Ann. § 321.384(1); Md. Code Ann., Transp. § 22-201.1; Miss. Code. Ann. § 63-7-11; Neb. Rev. Stat. Ann. § 60-6,219(1); Nev. Rev. Stat. Ann. § 484D.100; N.M. Stat.

regulations,[6] license plate rules,[7] inspection mandates,[8] and other vehicle safety laws.[9] *Cf. Opperman*, 428 U.S. at 368. Because states do not

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Ann. § 66-3-802; 75 Pa. C.S.A. § 4303(a); 31 R.I. Gen. Laws Ann. § 31-24-1(a); S.C. Code Ann. § 56-5-4450; Wash. Rev. Code Ann. § 46.37.020; W. Va. Code Ann. § 17C-15-2; Wyo. Stat. Ann. § 31-5-910.

[6] *E.g.*, 625 Ill. Comp. Stat. Ann. 5/12-602 ("Every motor vehicle driven or operated *upon the highways of this State* shall at all times be equipped with an adequate muffler or exhaust system.") (emphasis added); Colo. Rev. Stat. Ann. § 42-4-225(1); Del. Code Ann. tit. 21, § 4311(a); N.C. Gen. Stat. Ann. § 20-128(a); Or. Rev. Stat. Ann. § 815.250(1); Tenn. Code Ann. § 55-9-202(a); Wis. Stat. Ann. § 347.39(1).

[7] *E.g.*, Conn. Gen. Stat. Ann. § 14-18 ("Each motor vehicle for which one number plate has been issued shall, while in use or operation *upon any public highway*, display in a conspicuous place at the rear of such vehicle the number plate.") (emphasis added); Ala. Code § 32-6-51; Minn. Stat. Ann. § 169.79(1); Mo. Ann. Stat. § 301.130; N.H. Rev. Stat. Ann. § 261:75(II); N.J. Stat. Ann. § 39:3-33; N.Y. Veh. & Traf. Law § 402(1)(a); N.D. Cent. Code Ann. § 39-04-11; S.D. Codified Laws § 32-5-98; Tex. Transp. Code Ann. § 504.943 ; Vt. Stat. Ann. tit 23, § 511(a).

[8] *E.g.*, Utah Code Ann. § 53-8-205 ("[A] person may not operate *on a highway* a motor vehicle required to be registered in this state unless the motor vehicle has passed a safety inspection if required in the current year.") (emphasis added); N.C. Gen. Stat. Ann. § 20-183.8(a)(1); N.Y. Veh. & Traf. Law § 306(b).

[9] *E.g.*, Fla. Stat. Ann. § 316.610 ("It is a violation of this chapter for any person to drive or move, or for the owner or his or her duly authorized representative to cause or knowingly permit to be driven or moved, *on any highway* any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or . . . which is equipped in any manner in violation of this chapter.") (emphasis added); Ark. Code. Ann. § 27-37-101; La. Stat. Ann. § 32:53(a)(1); Mont. Code Ann. § 61-9-109(1)(c).

pervasively regulate vehicles parked within curtilage as they may on public roads, those vehicles do not suffer a reduced expectation of privacy.[10]

Second, regardless of regulation, when an object is within the curtilage, the heightened expectations of privacy for the home and curtilage remain intact. This is true for illegal drugs, for other contraband, and should be true for vehicles as well.

For instance, illegal drugs carry not just *reduced* expectations of privacy but *no* reasonable expectation of privacy at all. *See, e.g., United States v. Jacobsen*, 466 U.S. 109 (1984). But police cannot search homes or curtilage for illegal drugs without a warrant. *Horton*, 496 U.S. at 137 n.7 ("[E]ven where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure."). That is, even if illegal drugs are certainly present in the home, the protections of the home apply and require a warrant. *See Taylor*, 286 U.S. at 5 (throwing out a search of a

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[10] Earlier cases suggested that an automobile had diminished expectations of privacy because it "travels public thoroughfares where both its occupants and its contents are in plain view." *Opperman*, 428 U.S. at 368; *id.* (noting the "obviously public nature of automobile travel"). But in *Carney*, the Court conclusively rejected that suggestion: "These reduced expectations of privacy derive not from the fact that the area to be searched is in plain view," but rather from pervasive vehicle regulation. 471 U.S. at 392; *accord Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996). Anyway, automobiles parked within the curtilage are *not* "travel[ing] public thoroughfares"; they are stationed where the Fourth Amendment's privacy protections reach their peak.

detached garage that yielded 122 cases of bootleg whiskey for lack of a warrant).

What is clearly true for pure contraband should be at least equally true for vehicles, which are after all still protected "effects" as "that term is used in the [Fourth] Amendment." *United States v. Jones*, 565 U.S. 400, 404 (2012).

Knotts and *Karo* illustrate how expectations of privacy in the home control over any reduced expectation of privacy in vehicles. Because "[a] person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements," *United States v. Knotts* held that police did not need a warrant to track a car to a cabin using a beeper hidden in the car's cargo. 460 U.S. 276, 281–82 (1983). Significantly, the record in *Knotts* did "not reveal that the beeper was used after the location in the area of the cabin had been initially determined." *Id.* at 278–79.

In *United States v. Karo*, however, police continued monitoring the beeper after the car parked at a home. 468 U.S. 705 (1984). By using "an electronic device to obtain information that it could not have obtained by observation from outside the curtilage," the police violated the expectation that our homes enjoy "privacy free of governmental intrusion not authorized by a warrant." *Id.* at 714–15.

As in *Karo*, police must respect the expectations of privacy of the home when a vehicle is within the curtilage. There is "no reason for deviating from the general rule that a search of a house should be conducted pursuant to a warrant." *Id.* at 718. In

short, "vehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances." *Vickers*, 793 S.E.2d at 171.

C. Warrants and exigency cover legitimate needs for searches in curtilage.

In considering the proper scope of the automobile exception, a relevant factor is "the degree to which it is needed for the promotion of legitimate governmental interests." *Riley*, 134 S. Ct. at 2484. Here, hardly any such need exists.

The classic application of the automobile exception involves a police officer, often alone, standing in flashing blue lights by the side of the highway. Probable cause to search a car can develop quickly. Waiting for a warrant is not practical, and may invite either escape or trouble in a situation that already involves "inordinate risk" to officer safety. *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977).

But at a house—even a vehicle parked at a house—the scene is different. The owner of the vehicle is not likely in it, and may not be home at all (as in this case). A stationary address gives police options—surveillance over a period of time (as in this case), an opportunity to knock-and-talk, perhaps obtaining consent, or the chance to make plans to engage the vehicle when it returns to the street. Further, police commonly obtain warrants to search in and around people's homes.

Today, police can obtain a warrant more efficiently than at any time in history. *Missouri v. McNeely*, 569

U.S. 141, 154–55 (2013) (recognizing that modern technology and procedures "allow for the more expeditious processing of warrant applications" so that "police officers [can] secure warrants more quickly, and do so without undermining the neutral magistrate judge's essential role as a check on police discretion"). A majority of states "allow police officers . . . to apply for search warrants remotely through various means, including telephonic or radio communication [and] . . . e-mail." *Id.* at 154; *Riley*, 134 S. Ct. at 2493 (an e-mail warrant can be obtained in less than 15 minutes).

When there is *actually* no time for a warrant, exigency doctrine should solve the problem. "Exigent circumstances doctrine is adequate to accommodate legitimate law enforcement needs." *Steagald*, 451 U.S. at 222; *see also McNeely*, 569 U.S. at 165 (rejecting a categorical exception to the warrant requirement for blood tests in drunk-driving cases); *Riley*, 134 S. Ct. at 2487 (rejecting a categorical exception to the warrant requirement for cell-phone searches because the exigency doctrine is a "targeted way[]" to address concerns). After all, at least several states and the Fifth Circuit already "require that there be exigent circumstances justifying a search" when "a vehicle is parked in the defendant's residential driveway." *United States v. Beene*, 818 F.3d 157, 164 (5th Cir. 2016).

Put differently, police already may search vehicles in the curtilage without a warrant in the event of exigency. There is no reason to lay the broader, categorical automobile exception on top of these rules.

For instance, in *Scher v. United States*, 305 U.S. 251 (1938), the police searched a car in a garage. The Commonwealth argues that *Scher* supports applying the automobile exception on curtilage. BIO 16. In fact, the opposite—*Scher* shows that the automobile exception is unnecessary.

In *Scher*, officers with probable cause to stop a car for bootlegging chased the car into the driver's garage. 305 U.S. at 253. The driver then stepped out of the car and made incriminating statements. *Id.* The Court held that the search of the vehicle "accompanied an arrest, without objection and on admission of probable guilt." *Id.* at 255.

Scher rested on the lawfulness of a search incident to arrest. The government urged that the search was lawful as incident to an arrest. Brief for United States, *Scher v. United States*, No. 49, 1938 WL 63934 at *14. And the Court's holding that the searching officers "did nothing either unreasonable or oppressive" relied on two cases regarding "the admissibility of evidence seized during a search incident to a lawful arrest." *Coolidge*, 403 U.S. at 459 n.17 (plurality).

Hot pursuit principles also justified *Scher*'s holding. "Passage of the car into the open garage closely followed by the observing officer did not destroy" the uncontested right to stop and search that existed only seconds before. *Scher*, 305 U.S. at 255; Brief for United States, *Scher*, 1938 WL 63934, at *24 (A car "which is being trailed can[not] secure immunity by being driven into a private garage."). Given all this, the automobile exception in *Scher*, even if present, would be doing no work.

Extending the automobile exception to vehicles parked in the curtilage of homes would change nothing about hot pursuits, urgent human safety issues, or any other exigency that would allow an officer to search a vehicle. Instead, it would swallow those case-by-case exigencies into a categorical automobile exception. It would destroy the "clear distinction between a search of a car that the police had pursued onto private property and one that was long unoccupied and parked in a driveway for a period of time." *United States v. Moscatiello*, 771 F.2d 589, 600 (1st Cir. 1985), *vacated on other grounds sub nom. Rooney v. United States*, 476 U.S. 1138 (1986). Extending the automobile exception thus would do work *only* in cases where there is no exigency—and by definition, no urgent need to search before obtaining a warrant.

Indeed, a savvy police officer could take advantage of such a rule by delaying a warrantless vehicle search *until* it has entered the curtilage—up a driveway, under a carport, or inside of a garage. By timing the search correctly, the automobile exception would become a bootstrap for a free warrantless peek within the sanctity of the home. That incentive would flip the Fourth Amendment on its head.

IV. The automobile exception cannot justify the search of Mr. Collins' covered motorcycle.

The Supreme Court of Virginia's "simple, bright-line test for the automobile exception," Pet. App. 14, holds that that the automobile exception applies to vehicles *wherever* they sit. That rule entirely misses the constitutional significance of the home and

curtilage. This Court should hold that warrantless intrusions into the curtilage cannot be cured by the automobile exception.

Applying that rule to the facts here shows that Officer Rhodes violated Collins' Fourth Amendment rights. The automobile exception does not apply.

A. The motorcycle was in the curtilage.

Collins' motorcycle was within the area "immediately surrounding and associated with the home" and so "part of the home itself for Fourth Amendment purposes." *Oliver*, 466 U.S. at 180; *Kyllo v. United States*, 533 U.S. 27, 33 (2001) ("an area immediately adjacent to a private home" is curtilage).

"The motorcycle was parked within feet of the side of a house in a residential suburban neighborhood and as immediately surrounding the home as possible without being inside it." Pet. App. 30 n.4 (Mims, J., dissenting). The motorcycle stood on a concrete parking patio, beyond the end of the asphalt driveway. Pet. App. 113. Parked inside the home's front perimeter wall, it sat beyond where any visitor heading for the front steps would go. Pet. App. 114. Brick walls, all higher than the motorcycle, surround the parking patio on three sides. *Id.* The motorcycle sat no more than roughly a car's width away from the side wall of the dwelling, near a side door. *Id.; see also* Pet. App. 30 n.4. These facts—shown by photographs in the record—demonstrate curtilage.

Moreover, in *Jardines* this Court identified the "porch," the "side garden" and the area "just outside the front window" as obviously curtilage. 569 U.S. at

6. Here, the concrete parking patio is the equivalent of a "side garden": it is protected on three sides from public view, nestled against the side of the house. The area also sits "just outside" of a side door to the house. Pet. App. 114. Given the undisputed layout of this area, the curtilage is "easily understood from our daily experience," *Oliver*, 466 U.S. at 180, to extend at least across the parking patio to the brick retaining wall within which the motorcycle sat.[11]

Indeed, the distance from the motorcycle to the house—no more than roughly a car's width away—makes this an easy case for finding curtilage. *See* BIO 34 (conceding that "the motorcycle's location in the driveway was . . . close to the house itself"). That explains why the Commonwealth never argued below that the motorcycle was parked beyond the curtilage, despite Collins' repeated insistence that curtilage was undisputed. *See* Collins Opening Brief to the Virginia Court of Appeals, JA157 (asserting that it was "uncontested" that "Officer Rhodes entered into the curtilage of a home"); Collins Opening Brief to the Supreme Court of Virginia, JA205 (same). Only in this Court has the Commonwealth begun to deny that the motorcycle sat within the curtilage. BIO 34.

That argument is waived. The government "may lose its right to raise factual issues" such as extent-of-curtilage questions "before this Court when it has . . . failed to raise such questions in a timely fashion

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[11] At common law, the curtilage extended well beyond the porch and other areas a few yards from the home. It was "sometimes said to reach as far as an English longbow shot—some 200 yards—from the dwelling house." *United States v. Carloss*, 818 F.3d 988, 1005 n.1 (10th Cir. 2016) (Gorsuch, J., dissenting) (citing 1 Hale, *Historia Placitorum Coronae* 559).

during the litigation." *Steagald*, 451 U.S. at 209. Here, the Commonwealth's strategic decision not to offer any argument that the motorcycle was off-curtilage achieved a bright-line rule from the Virginia Supreme Court that made curtilage status irrelevant. The Commonwealth cannot now back away from this.

In any event, *United States v. Dunn*, 480 U.S. 294 (1987) does not illuminate the curtilage question here. *Dunn* analyzed four factors to confirm that a barn on a 200-acre ranch, separated from the house by 60 feet and a fence, was outside the curtilage. *Id.* at 297, 302–03 (evaluating proximity to the house, any enclosures surrounding the home, the uses for the area, and steps taken to shield observation). But *Dunn* itself recognized that those factors do not control "all extent-of-curtilage questions"; they are "useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." 480 U.S. at 301.

This Court bypassed those factors in *Jardines* because they were unnecessary. Areas within a car's width from the house are curtilage without needing a *Dunn* test. 569 U.S. at 6. The partly enclosed parking patio here—like the front porch in *Jardines*—is curtilage without the need for an analysis appropriate for distant fields and outbuildings scattered across hundreds of acres.

Indeed, the same *Dunn* arguments the Commonwealth makes here would also cut against those classic exemplars of curtilage. Front porches

often are "not within an enclosure that also surround[s] the home," need not be used for private domestic purposes, and frequently have "no fence or gate . . . to shield activities . . . from travelers passing by." BIO 34.

If the little sunken parking patio here is unprotected open field, as the Commonwealth suggests, then the privacy of Collins' (or anyone's) home would be illusory. Police could "trawl for evidence with impunity" at the outer wall of the house. *Jardines*, 569 U.S. at 6. An officer could "observe [Collins'] repose from just outside" the glass side door overlooking the parking patio. *Id.*; Pet. App. 114. He could even haul a pair of "super-high-powered binoculars" to "stan[d] on the porch and us[e] the binoculars to peer through [the door], into [the] home's furthest corners." *Id.* at 12 (Kagan, J., concurring). All of this, he could do without a warrant or probable cause. Because it is "easily understood from our daily experience," *Oliver*, 466 U.S. at 182 n.12, that such observation from within the shadow of the home would violate reasonable privacy, that area must be curtilage.

The record is more than sufficient for this Court to conclude that the motorcycle was parked in the curtilage. In *Jardines*, for example, no lower court had made a curtilage determination. *See, e.g.*, *Jardines v. State*, 73 So.3d 34, 58 (Fla. 2011) (Lewis, J., specially concurring) (refraining from "discuss[ing] and debat[ing] the concept and extent of curtilage" because "[a]llowing a dog to sniff the air and odors that escape from within a home under a door is tantamount to physical entry into that home."). Yet this Court had "no doubt" based on "our daily

experience" that the front porch was curtilage. 569 U.S. at 7. The same is true of the partly enclosed sunken parking patio here.

B. No implied license authorized the officer's acts.

No implied license authorized Officer Rhodes to stand in the sunken parking patio where he searched the motorcycle. Nor was there any license to remove its cover. Officer Rhodes did not approach the front door. Instead, he snooped into a parking patio immediately next to the home, looking for evidence of a traffic crime that occurred over a month earlier.

The customary invitation into the curtilage only "permits the visitor to approach the home by the front path." *Jardines*, 569 U.S. at 8. To reach the motorcycle, however, Officer Rhodes could not "stay on the base-path" to the front door. *Id.* at 9 n.3. The path to the front door required a visitor to turn right at the steps leading up to the front porch. But the sunken parking patio where the motorcycle sat was entirely beyond the bottom of those steps. Pet. App. 112, 114. So, to reach the motorcycle, Officer Rhodes had to continue beyond the steps on the right, enter the parking patio, and walk left to the motorcycle. That area was not impliedly open to visitors. *Jardines*, 569 U.S. at 8.

Yet even if Officer Rhodes had a license to stand next to the motorcycle, he had no implied permission to remove its cover. *See id.* at 9 ("The scope of a license . . . is limited not only to a particular area but also to a specific purpose."). The implied license invites a visitor *to the front door*—to "knock promptly" and

"wait briefly to be received." *Id.* at 8. But visitors do not stop in the yard to investigate whatever personal property is present—"[t]here is no customary invitation to do *that*." *Id.* at 9.

And there is certainly no customary invitation to strip the protective cover from a vehicle. That is itself a common law trespass that violates the "privacy expectations inherent in items of property that people possess or control," just like the attachment of a tracker to a vehicle. *Jones*, 565 U.S. at 414 (Sotomayor, J., concurring). It is a trespass even if the police aim merely to check a serial number. *See Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987). Even more than nosy neighbors walking metal detectors along the front path or marching their bloodhounds into a garden, stripping a cover from someone else's motorcycle suggests a crime is about to occur. That "would inspire most of us to—well, call the police." *Jardines*, 569 U.S. at 9; *id.* at 20 (Alito, J., dissenting) (disapproving intrusions that "could be a cause for great alarm").

C. The intrusion also violated reasonable expectations of privacy.

For similar reasons, "looking to [Collins'] privacy interests" also makes this "easy cas[e] easy." *Id.* at 13, 16 (Kagan, J., concurring). Considering the motorcycle's location, "[i]t is not surprising that . . . property concepts and privacy concepts should so align." *Id.* at 13.

Courts have recognized that an expectation of privacy over vehicles on curtilage is reasonable. *See, e.g., Vickers*, 793 S.E.2d at 169–70 ("[A] defendant has

a reasonable expectation of privacy in a vehicle parked within the curtilage of his home."); *Redwood*, 772 N.E.2d at 813 ("By parking a vehicle in the driveway or yard of one's home, one brings the vehicle within the zone of privacy relating to one's home.").

Officer Rhodes' intrusion into the curtilage threatened "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Jardines*, 569 U.S. at 13. After all, this happened in a location where Virginia's pervasive regulation of vehicles operated on highways does not apply. To the extent that Officer Rhodes sought to learn the license status of the motorcycle, his entry arguably *violated* statutory Virginia law, which requires permission from the landowner before police may patrol private property for violations of the vehicle code. Va. Code § 46.2-102.

Officer Rhodes invaded a space where "privacy expectations are most heightened." *Jardines*, 569 U.S. at 13. He then trespassed upon Collins' motorcycle cover, and exposed what had been private. A cover over a motorcycle parked next to a house serves much like a garage—it protects an open vehicle from the weather and from passersby, and makes stealing it more difficult.

That the motorcycle later proved stolen does not change this analysis. A "search prosecuted in violation of the Constitution is not made lawful by what it brings to light." *Byars v. United States*, 273 U.S. 28, 29 (1927); *Warden v. Hayden*, 387 U.S. 294, 305–06 (1967) ("[W]e have given recognition to the interest in privacy despite the complete absence of a property claim by suppressing the very items which at

common law could be seized with impunity: stolen goods.").

Collins surely had a proper privacy interest in the home where he often lived with his girlfriend and daughter. Even if there is "no legitimate expectation of privacy in stolen property, as such," the search into the partly enclosed parking patio and under the cover of the motorcycle "actually interfered with . . . *a place* as to which he had a reasonable expectation of privacy." 6 LaFave, Search & Seizure § 11.3(f) (5th ed.); Tr. of Oral Argument, *Florida v. Jardines*, No. 11-564, Tr. 25:14–16 (Justice Kennedy: "What you're saying is, oh, well, if there is contraband in the house, then you have no legitimate expectation of privacy. That, for me, does not work.").

Nor does *New York v. Class* defeat Collins' reasonable expectation of privacy. *Class* held that "a police officer may reach into the passenger compartment of a vehicle to move papers obscuring the VIN after its driver has been stopped for a traffic violation." 475 U.S. 106, 107 (1986). That decision established "the scope of police authority pursuant to a traffic violation stop" for "an automobile driven upon public roads." *Id.* at 114–15.

Class does not rubber-stamp intrusions onto private property to inspect VINs on parked vehicles. That VINs are "required by law to be located in a place ordinarily in plain view from the exterior of an automobile," *id.* at 114, does not alter the plain view principles that first require that "the officer be lawfully located in a place from which the object can be plainly seen." *Horton*, 496 U.S. at 137. *Class* does not apply to vehicles parked on curtilage.

Relying on *Class* to justify Officer Rhodes' search would carry extraordinary implications. The Commonwealth does not dispute that its position would authorize warrantless intrusions into garages or carports to remove protective covers and rummage through vehicles—as long as it's not the "dead of night." BIO 26–27. If *Class* governs, however, police seeking VIN numbers would not even need probable cause to trespass and reach into or strip covers from vehicles in protected places. Any position that would authorize that sort of warrantless, suspicionless entry into the home and curtilage is profoundly at odds with the Fourth Amendment.

CONCLUSION

For these reasons, the judgment of the Virginia Supreme Court should be reversed.

Respectfully submitted,

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November 13, 2017